

**CENTRAL INFORMATION COMMISSION**  
**Club Building (Near Post Office)**  
**Old JNU Campus, New Delhi - 110067**  
**Tel: +91-11-26161796**

**Decision No. CIC/SG/A/2010/002473/10000**  
**Appeal No. CIC/SG/A/2010/002473**

**Relevant Facts emerging from the Appeal:**

**Appellant** : Mr. C. P. Dharmesh,  
C/o Mr. B. D. Sharma,  
2125, Alipur (Garhi),  
Delhi- 110036

**Respondent** : Mr. A. K. Sharma,  
Public Information Officer &  
Assistant Registrar,  
**Registrar of Cooperative Society,**  
**GNCTD**  
Parliament Street, New Delhi - 110001

RTI application filed on : 24/05/2010  
PIO replied on : 14/06/2010  
First Appeal filed on : 03/07/2010  
First Appellate Authority order of : 26/07/2010  
Second Appeal received on : 04/09/2010  
Date of Notice of Hearing : 22/09/2010  
Hearing Held on : 20/10/2010

**Information Sought:**

- RTI application bearing I. D. No. 8942:

**Concerned department:** ESIC Friends Co-op G/H Society, White House Apartments, Plot No. 34, Sector 13, Rohini, Delhi- 110085 (Regd. No. 576).

Certified copy of original minutes of the meetings (AGM, SGM, GBM, meeting of the MC, etc.) held by the society/MC during the last 10 years from 2000- 01 till date.

- RTI application bearing I. D. No. 8943:

**Concerned department:** ESIC Friends Co-op G/H Society, White House Apartments, Plot No. 34, Sector 13, Rohini, Delhi- 110085 (Regd. No. 576).

Certified copy of notice of the various meetings (AGM, SGM, GBM, meeting of the MC, etc.) held by the society/MC during the last 10 years from 2000- 01 till date.

**Reply of the Public Information Officer (PIO):**

In relation to both the RTI applications, the PIO stated that the Information sought was neither available on record nor was required to be maintained by the office of RCS. The information sought pertained to the

society. The society is not a public authority as per the decision of the Commission in CIC/SG/A/2009/000979/3706 dated 15/06/2009 and hence the RTI application cannot be sent to the society.

### **Grounds for the First Appeal:**

The RTI applications were not forwarded to the concerned society by the PIO and therefore no information was provided to the Appellant.

### **Order of the First Appellate Authority (FAA):**

- **RTI application bearing I. D. No. 8942:**

The FAA observed that the PIO had given a proper reply to the Appellant vide letter dated 14/06/2010. The FAA disagreed with the contention of the Appellant that cooperative societies are public authorities for the reason that they are required to reply to RTI questions under Section 139 of the Delhi Cooperative Societies Act, 2003 (the “DCS Act”). The FAA noted that bare reading of Section 139 of the DCS Act indicated that only the members or creditors having interest in the affairs of the society were entitled to seek information under the DCS Act. Outsiders were not eligible to get the information. The logic that the officers and employees of the society were public servants under Section 128 of the DCS Act did not help as this provision had been given specifically within the meaning of Section 21 of the Indian Penal Code, 1860 and not otherwise. The decision in the case indicated that the RCS was the public authority. The First Appeal was disposed off.

- **RTI application bearing I. D. No. 8943:**

The FAA observed that the PIO had given a proper reply to the Appellant vide letter dated 14/06/2010. The First Appeal was disposed off.

### **Grounds for the Second Appeal:**

Denial of information on the part of the PIO and unfair disposal of the First Appeal by the FAA.

### **Relevant Facts emerging during Hearing held on October 20, 2010:**

The following were present:

**Appellant:** Mr. B. D. Sharma representing the Appellant;

**Respondent:** Mr. A. K. Sharma, Public Information Officer & Assistant Registrar.

“The Appellant claimed that the society was a public authority under the RTI Act and provided written submissions to the Commission in support of his contention. The Commission decided to peruse the written submissions and then decide the matter.

The decision was reserved during the hearing held on October 20, 2010.”

### **Decision announced on 02 November 2010:**

The Appellant submitted that the ESIC Friends CGHS Limited (the “**Society**”) was a public authority as per Section 2(h) of the RTI Act. The contentions raised by the Appellant were as follows:

1. The Society was established and registered vide registration number 576 under the Delhi Cooperative Societies Act, 1972 (now repealed) and therefore, was a body established or constituted by any other law made by a state legislature under Section 2(h)(c) of the RTI Act;
2. Reliance was placed on Sections 37, 38, 40, 41, 42, 67, 68, 96 and 139 of the DCS Act in order to establish that the Society was under the control of RCS and therefore, the Society was a body controlled by the appropriate government under Section 2(h)(d)(i) of the RTI Act; and
3. The Society was substantially financed by the appropriate government and was therefore, a body substantially financed directly or indirectly by the appropriate government under Section 2(h)(d)(i) of the RTI Act. In this regard, the Appellant submitted as follows:

- a. The land of the Society belonged to the DDA and was allotted to the Society at concessional rates on the basis of a perpetual lease hold only. Copy of the lease deed was provided to the Commission; and
- b. Certain financial concessions by way of stamp duty and registration charges were given to the Society under Sections 50 and 51 of the DCS Act. For instance, the cost of a flat was Rs. 7,00,000. The stamp duty payable on the sale of the flat was Rs. 56,000 and when taken for 121 flats, was Rs. 67,76,000. Concession was given to the Society in this regard. Though there was no documentary proof for the same, the concession was given to the members including the Appellant as per Sections 50 and 51 of the DCS Act.

The main issue before the Commission was whether the Society is a “public authority” as per Section 2(h) of the RTI Act. Section 2(h) of the RTI Act provides as follows:

*“2. In this Act, unless the context otherwise requires-*

*...*

*(h) “public authority” means any authority or body or institution of self- government established or constituted,--*

*(a) by or under the Constitution;*

*(b) by any other law made by the Parliament;*

*(c) by any other law made by State Legislature;*

*(d) by notification issued or made by the appropriate Government,*

*and includes any-*

*(i) body owned, controlled or substantially financed;*

*(ii) non- Government Organisation substantially financed, directly or indirectly by funds provided by the appropriate Government;”*

The Commission perused the provisions of the DCS Act and the Delhi Cooperative Societies Act, 1972 (now repealed) and noted that the said legislations refer to *inter alia* only registration of cooperative societies. Cooperative societies are neither established nor constituted under the DCS Act and the Delhi Cooperative Societies Act, 1972 (now repealed), as contended by the Appellant. An analogy may be drawn with shops and commercial establishments which are required to be registered under the law relating to shops and establishments of the relevant state. If the contention of the Appellant were to be accepted, then all shops and commercial establishments would come within the purview of “public authority” as defined under Section 2(h) of the RTI Act. According to the Commission, this would tantamount to giving an extremely broad interpretation to Section 2(h) of the RTI act, which was certainly not the intent of the legislators. Therefore, the contention of the Appellant that the Society was established and registered under the Delhi Cooperative Societies Act, 1972 (now repealed) and therefore, was a body established or constituted by any other law made by a state legislature under Section 2(h)(c) of the RTI Act is baseless and is therefore rejected.

Further, under Section 2(h)(d)(i) of the RTI Act, in order to ascertain whether a body is “controlled” by the appropriate government, the organizational structure, bye- laws, charter documents, shareholding pattern or other forms which envisage control over the concerned body by the appropriate government must be reviewed. On perusal of certain provisions of the DCS Act relied upon by the Appellant, the Commission observed that these provisions do not establish “control” over the Society by the appropriate government through RCS, as envisaged under Section 2(h)(d)(i) of the RTI Act. The provisions of the DCS Act which are cited by the Appellant are powers that are typically granted to any regulatory body to oversee the proper functioning of all the entities registered with it. The RCS is also a regulatory body which exercises certain powers to ensure proper functioning of the cooperative societies registered with it.

In this regard, an analogy may be drawn with the provisions of the Companies Act, 1956 under which both public and private companies are required to be registered. Under the Companies Act, 1956, the Registrar of Companies (the “ROC”) exercises certain powers over companies and regulates the functioning of the latter. The control over a company is determined as per its organizational structure, shareholding pattern, charter documents, etc. The ROC only functions as a regulator and it cannot be said that the appropriate government through the ROC exercises “control” over such companies. Therefore, the contention of the Appellant that the Society was “controlled” by the appropriate government through the RCS as per Section 2(h)(d)(i) of the RTI Act is devoid of any merit.

The Appellant further contended that the Society was substantially financed by the appropriate government and was therefore, a body substantially financed directly or indirectly by the appropriate government under Section 2(h)(d)(i) of the RTI Act. In this regard, the Appellant submitted a copy of the lease deed on the basis of which land was allotted to the Society at concessional rates by the DDA. On perusal of the lease deed, the Commission noted that a sum of Rs. 8,90,310 was paid by the Society i.e. the lessee to the lessor as premium towards execution of the lease deed. Further, the lease deed stipulates payment of Rs. 605 as advance rent and Rs. 22,257.75 as rent by the lessee. Notwithstanding the figures mentioned above, the Appellant failed to explain how the land was allotted to the Society at concessional rates. The onus lies on the Appellant to prove that substantial finance was in fact being provided to the Society directly or indirectly by the appropriate government as per Section 2(h)(d)(i) of the RTI Act. In the instant case, the Appellant failed to establish the value of substantial funding that was being extended by the appropriate government.

Furthermore, the Appellant also contended that certain financial concessions by way of stamp duty and registration charges were given to the Society under Sections 50 and 51 of the DCS Act. The Commission noted that the said provisions pertain to exemption to cooperative societies from compulsory registration of instruments and payment of certain fees, taxes and duties. According to the Commission, the word “substantial” as used in Section 2(h)(d)(i) of the RTI Act does not necessarily connote majority financing. It is akin to “material” or “important” or “of considerable value” and depends on the facts and circumstances of the case. In the instant case, a mere exemption from registration of instruments or payment of certain levies cannot be regarded as indirect substantial financing by the appropriate government. Moreover, it was observed that such exemptions have been given to all cooperative societies registered under the DCS Act. If the contention of the Appellant were to be accepted, then all societies would come within the purview of “public authority” as defined under Section 2(h) of the RTI Act, which is not envisaged under the RTI Act. Therefore, the Commission does not accept the Appellant’s contention that the Society was substantially financed by the appropriate government and was therefore, a public authority under Section 2(h)(d)(i) of the RTI Act.

In light of the aforesaid, the Commission rejects all the contentions raised by the Appellant and holds that the Society is not a public authority under Section 2(h) of the RTI Act.

### **The Appeal is dismissed.**

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of the RTI Act.

**Shailesh Gandhi**  
**Information Commissioner**  
**02 November 2010**

*(In any correspondence on this decision, mention the complete decision number.)(ND)*